

APPEAL NO. 171268  
FILED JULY 19, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 12, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of January 16, 2014, does not extend to nerve entrapment in the left lower extremity or chronic pain syndrome; (2) the appellant (claimant) reached maximum medical improvement (MMI) on October 7, 2015; and (3) the claimant's impairment rating (IR) is 10%.

The claimant appealed all of the hearing officer's determinations. The claimant contended that the evidence established that the compensable injury extends to the claimed conditions, and that the MMI/IR certification adopted by the hearing officer does not consider and rate the entire compensable injury. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated in part that the carrier has accepted a left ankle sprain/strain and left ankle lateral malleolus fracture as components of the compensable injury; the date of statutory MMI is September 1, 2016; and the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) for purposes of MMI, IR, and extent of injury is (Dr. P). We note the decision in some instances incorrectly identifies Dr. P as, "Dr. P," and "Dr. P." The claimant testified she was injured at work on January 16, 2014, when one of the wheels of the stepstool on which she was standing came off and caused her to fall and twist her left ankle.

**EXTENT OF INJURY**

The hearing officer's determination that the compensable injury of January 16, 2014, does not extend to nerve entrapment in the left lower extremity or chronic pain syndrome is supported by sufficient evidence and is affirmed.

**MMI**

The hearing officer's determination that the claimant reached MMI on October 7, 2015, is supported by sufficient evidence and is affirmed.

## IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Dr. P, the designated doctor appointed by the Division to determine MMI and IR, examined the claimant on January 19, 2016, and in a Report of Medical Evaluation (DWC-69) dated January 22, 2016, certified that the claimant reached MMI on October 7, 2015, with a 10% IR, using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). In his attached narrative report Dr. P assigned 3% impairment for 40° of plantar flexion, 3% impairment for 10° of dorsiflexion, 1% impairment for 10° of eversion, and 1% impairment for 10° of inversion using Tables 42 and 43 on page 3/78 of the AMA Guides, for a total 8% impairment for loss of range of motion (ROM) of the claimant's left ankle. Dr. P also assigned 2% impairment for a superficial peroneal nerve dysesthesia using Table 68 on page 3/89. Using the combined values chart, Dr. P combined 8% impairment for loss of ROM of the left ankle and 2% impairment for the superficial peroneal nerve dysesthesia for a combined whole person impairment (WPI) of 10%.

However, Table 42 on page 3/78 provides that 40° of plantar flexion results in 0% impairment, not 3% impairment as assigned by Dr. P. Dr. P's 8% impairment for loss of ROM of the left ankle was in error.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. See Appeals Panel Decision (APD) 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. Under the facts of this case, the certifying doctor's

assigned IR can be mathematically corrected based upon the left ankle ROM measurements documented in his narrative report.

Assigning the correct 0% impairment for loss of ROM based on 40° of plantar flexion with 3% impairment for 10° of dorsiflexion, 1% impairment for 10° of eversion and 1% impairment for 10° of inversion results in 5% impairment for loss of ROM of the claimant's left ankle. Combining 5% impairment for loss of ROM of the claimant's left ankle with 2% impairment for the superficial peroneal nerve dysesthesia results in a WPI of 7% for the compensable injury rather than 10%. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 10% and we render a new decision that the claimant's IR is 7%.

The hearing officer found that the preponderance of the other medical evidence is not contrary to Dr. P's assigned IR, and after a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 10% and render a decision that the claimant's IR is 7% as mathematically corrected.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Margaret L. Turner  
Appeals Judge